

1 available. If they fell below certain volumes, then it
2 would fall to a different rate schedule.

3 Q And the rates that were identified for CLECs --
4 I'm just looking at the key here -- the double asterisks
5 says "rates impacted by volume and term commitment including
6 inside wire commitment." For that group that includes CLEC
7 56 --

8 A Uh-huh.

9 Q -- there's also, under CLEC 67, the last one in
10 this list, rates impacted by volume and term commitment
11 including inside wire commitment. So there is some volume
12 and term commitment involved in each one of these, right?

13 A Yes.

14 Q Okay. And CLEC 12, to your knowledge, is the same
15 CLEC 12 that's listed as number 12 on the first page of the
16 spreadsheet, right?

17 A Yes, but again, I just want to remind the
18 Commission that the commercial agreement volume and term
19 arrangements are reached on a regional level. So the volume
20 and term arrangements would not be reflective of those unit
21 counts you see represented for Georgia. So --

22 Q But the -- I'm sorry.

23 A I was just going to say you can't deduce
24 particular volume and term commitment unless you've got a
25 Georgia only agreement.

1 Q But the rates reflected there are rates that are
2 applicable in Georgia, right?

3 A They're applicable in Georgia based on the
4 totality of units that this particular carrier keeps in
5 service in the BellSouth serving area, not just for Georgia.

6 Q And if I could turn our attention to what should
7 be the second document I handed you, which is entitled "Mass
8 Market Switching Relief Rate," it's a BellSouth document
9 designated draft 1/20/04, January 20, '04. Have you got
10 that with you?

11 A Yes.

12 Q Okay. In the -- slipping a couple of pages --
13 Mass Market Rate Justification at page 3, in coming up with
14 the mass market rate -- and when this refers to mass market
15 rate, is it referring to the mass market switching rate?

16 A Yes.

17 Q Okay. In coming up with that switching rate, did
18 BellSouth look at any competitive offerings to determine
19 what would be a reasonable rate?

20 A To the best of my knowledge, I'm not aware that we
21 actually did that. What we did look at were BellSouth's
22 retail rate, the filed TELRIC rate that BellSouth believes
23 fully recovers its costs in a forward looking model; an
24 internal activity-based accounting system which looks at
25 incremental cost of providing the service. We looked at

1 CLEC cost to build. We also took into account the rates
2 that we offer our services in the retail market. And then
3 again, we looked at the rates that the Commissions had
4 ordered. So all of those were component elements that were
5 taken into account when developing the unbundled switching
6 rate as part of our commercial offer.

7 Q And at the last page of this document entitled
8 "Key Issues", there's a bullet here for comparing to
9 McKinsey modeling. Can you tell us what the McKinsey
10 modeling is?

11 A I'm actually not familiar with the McKinsey
12 modeling.

13 Q Okay, and to your knowledge, did BellSouth produce
14 any such McKinsey modeling that was related to how they set
15 this rate?

16 A No, and I'm not aware that BellSouth engaged
17 McKinsey in performing any particular analysis that was
18 specific to the development of our rate.

19 Q You just don't know either way, right?

20 A Well, I worked very closely with McKinsey on a
21 number of engagements and I'm fairly familiar with those
22 engagements, so I am not aware that we actually engaged
23 them. They may have done some modeling for other companies
24 that they perhaps shared with us, but I'm not aware of it.

25 Q Do you know who prepared this PowerPoint

1 presentation we're looking at?

2 A No, I don't.

3 Q Do you know of any reason why it would refer to
4 comparing to McKinsey modeling if there wasn't such an
5 engagement?

6 A Only that the individual that prepared it may have
7 been aware that McKinsey had done some modeling for other
8 companies. There have been cases when McKinsey does have
9 permission to share its general modeling that it has done
10 for other companies in consulting situations. We've been
11 the benefactor of that in some cases. We've also agreed to
12 share some work that they have done on our behalf with
13 others.

14 Q Turning to the other set of PowerPoint slides,
15 "Mass Market Voice Platform Commercial Agreement Offer"
16 dated March 16, 2004, if you could turn to page 7, and I
17 believe it's page 7 of the second presentation, the June 18,
18 2004 presentation.

19 A Okay.

20 Q I just want to be sure we understand that the ABIS
21 -- and you've mentioned to us before what that stood for
22 right? What is it again?

23 A I believe -- and this is testing my memory --
24 Activity-Based Information System, I believe is what the
25 acronym stands for.

1 Q And this slide discusses BellSouth's recovery of
2 its cost from the DS0 platform and there are comparisons to
3 ABIS 1, 2, 3, 4 and 5. Do you see that?

4 A Yes.

5 Q Okay. Does ABIS include BellSouth cost
6 information?

7 A Well, it includes incremental cost information for
8 providing the service.

9 Q Well, but tell me what that means. That's kind of
10 an economist term and I made clear before, I'm not one of
11 those. When you say incremental, what all do you mean is in
12 there?

13 A Well, it takes, for example -- I don't know all of
14 the things that are in there because I'm certainly not a
15 modeling expert when it comes to activity-based accounting
16 systems, but ABIS takes into account things such as the
17 network cost to install each unit. That would include the
18 labor, the materials, the investment to do so. It also
19 would take into account other direct related costs such as
20 the manager that's responsible for the development and
21 offering of that product. Like Tommy Williams is a product
22 manager for this offer, so it takes into account that
23 person's time. And takes into account other labor-related
24 and indirect -- different levels of ABIS take into account
25 different types of items, as you can see in the bottom note.

1 Q In the bottom note?

2 A Yeah, ABIS 1, direct incremental in cash.

3 Q Okay. When you talk about asset costs, what's
4 included there? It says ABIS 1 plus asset costs.

5 A Again, I'm certainly not an ABIS expert, but my
6 understanding is that that takes into account the cost of,
7 for example, switch costs for the provision of the DS0
8 platform service.

9 Q And then the additional -- it says allocations and
10 spare asset costs in that next category.

11 A Uh-huh.

12 Q What kind of cost allocation is done in ABIS, like
13 what gets allocated?

14 A My understanding is -- and I certainly can't
15 present a full picture of an analysis of ABIS, but my
16 understanding is one example of an allocation may be as
17 director of a group of product managers, I might not be
18 directly responsible for a product, but one portion of my
19 time and expense would be allocated to an individual
20 product. Similarly, Mr. Ackerman, Mr. Ackerman's time and
21 cost is allocated, to some degree -- I certainly don't think
22 that 100 percent of his time is allocated to product, but
23 some small portion of his time is allocated to product.

24 Q So that would be fully distributed costs of
25 everything up to Mr. Ackerman, right?

1 A Again, I'm not a cost expert, so some of these
2 terms get way out beyond my headlights.

3 Q And to your knowledge, did BellSouth in any of its
4 preparations of the commercial agreement rates look at
5 competitive alternatives and what those competitive
6 alternatives were charging for the same service?

7 A I think it's my understanding that there are not -
8 - and I think it's already been discussed here today --
9 there's not a plethora of wholesale switch providers out
10 there. I think you can go to certain competitors' websites
11 and see that they are offering wholesale voice service, dial
12 tone service, for carriers to provide residential service to
13 their end users or even small business, but there isn't a
14 wide range of that type of carrier out there. What
15 BellSouth did look at is what a CLEC's cost to build might
16 be. And taking into account a number of factors, I think
17 the page just previous to the one that you directed me to,
18 which was page 6 of that same presentation, shows the
19 various factors that we took into account, various factors
20 carrying different weight. But one of those factors we took
21 into account was an estimate around what a CLEC's cost to
22 build might be. We know that a number of the CLECs that we
23 are business partners with have in fact deployed their own
24 switches. And so those switches are already out there, but
25 still we took into account activating those switches or

1 perhaps even deploying additional switches because a CLEC
2 doesn't have to mirror an ILEC's footprint in order to
3 provide dial tone service to its customers.

4 So we did take into account from a competitive --
5 meaning competitive against BellSouth -- a CLEC building out
6 its own network and we hope to price under that so they
7 would be led to our wholesale voice platform service instead
8 of continuing to build out their own network.

9 Q Okay, we can look at all the documentation you
10 provided about development of rate and we're not going to
11 find a single comparison to any other wholesale provider of
12 switching, right?

13 A No.

14 Q Okay. I just have one other question that's
15 related to the spreadsheet, but we don't need -- it's not a
16 detailed question on the spreadsheet, I just want to be sure
17 I'm clear. The five negotiated rates --

18 A Uh-huh.

19 Q -- the five companies that had negotiated rates
20 out of the others, did those negotiated rates serve as any
21 sort of benchmark for changing or informing the amount of
22 standard rate offering?

23 A Well, these negotiated rates would be available to
24 any carrier that's similarly situated. So from that
25 respect; yes, it did.

1 Q So you're saying that if you're similarly situated
2 to say CLEC 12, that you could get the same deal that CLEC
3 12?

4 A Potentially yes. It would be certainly open to
5 negotiation.

6 Q Well, when you say it's available, that's
7 different from saying it's open to negotiation. I just want
8 to be sure we're clear. When you say it's available, is it
9 available like an opt in, it's automatically available?

10 A No, we do not do opt ins. These are commercial
11 negotiations and CLECs may certainly come to the table with
12 us and we would make the same terms and conditions and rates
13 available to a similarly situated carrier. But there is no
14 opt in clause so they could say I want the agreement of CLEC
15 ABC. We ask them to actually engage with us in a commercial
16 discussion.

17 Q But if they, for example, said I want similar
18 terms to X, BellSouth reserves the right to not negotiate
19 that agreement with the other CLEC, right?

20 A Well, we have a non-discriminatory obligation, so,
21 you know, we're not going to violate our obligation under
22 non-discriminatory terms.

23 MR. MAGNESS: I think that's all I have, Mr.
24 Chairman. Just a moment.

25 (Brief pause.)

1 MR. MAGNESS: That's all the questions I have.

2 Thank you.

3 CHAIRMAN WISE: BellSouth -- oh, I'm sorry, Public
4 Service Commission.

5 MR. WALSH: No questions.

6 CHAIRMAN WISE: CUC.

7 MS. MELLINGER: No questions.

8 CHAIRMAN WISE: I didn't know if you wanted to
9 cross your witness.

10 MS. FOSHEE: No, but I would ask that she be
11 excused, Mr. Chairman.

12 CHAIRMAN WISE: She may be.

13 MS. FOSHEE: Thank you.

14 (Witness excused.)

15 MR. MAGNESS: Mr. Chairman, we would move into
16 evidence what we would ask be marked as CompSouth Exhibit --
17 let's call it 2, Mr. Gillan's testimony will be 1 --
18 CompSouth Exhibit 2.

19 CHAIRMAN WISE: Let's just go ahead and call it 1
20 since there's no 1 yet.

21 MR. MAGNESS: That'd be fine. 1 would be the
22 spreadsheet we discussed with Ms. Tipton entitled "Signed
23 Commercial Agreements, Georgia only Information"; CompSouth
24 2 would be the document entitled "Mass Market Switching
25 Relief Rate" dated January 20, 2004; and CompSouth 3 would

1 be the document entitled "Mass Market Voice Platform
2 Commercial Agreement Offer" dated March 16, 2004.

3 CHAIRMAN WISE: They will be.

4 (The documents referred to were
5 marked for identification as
6 CompSouth Exhibits 1, 2 and 3 and
7 received in evidence.)

8 MR. MAGNESS: And we will pick up the extra
9 copies.

10 CHAIRMAN WISE: All right.

11 MS. FOSHEE: Mr. Chairman, I don't know how late
12 you were planning on going tonight, but we're prepared to go
13 forward with Mr. Gillan, if you're interested.

14 CHAIRMAN WISE: I am too, Ms. Foshee.

15 MS. FOSHEE: Okay, good.

16 CHAIRMAN WISE: I don't mind you calling your
17 witness, Mr. Magness, but you need to do something with him
18 now that we've got him up there.

19 MR. GILLAN: I would like to put limits on that
20 suggestion.

21 (Laughter.)

22 CHAIRMAN WISE: Well, Mr. Gillan, you were the one
23 I was talking about earlier when I was complaining about
24 being able to turn four pages of testimony into six minutes
25 of summary.

1 MR. GILLAN: You'll be glad to know I have 50
2 pages of testimony. It's going to be a long evening.

3 MR. MAGNESS: Mr. Gillan, your right hand is
4 raised.
5 Whereupon,

6 JOSEPH GILLAN
7 appeared as a witness herein and, having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MAGNESS:

11 Q Mr. Gillan, would you please state your full name
12 and business address?

13 A Joseph Gillan, P.O. Box 541038, Orlando, Florida
14 32854.

15 Q And by whom are you employed?

16 A I'm self-employed.

17 Q And did you cause to be filed 46 pages of
18 testimony entitled "Testimony of Joseph Gillan on behalf of
19 the Competitive Carriers of the South, Inc."?

20 A Yes.

21 Q And the testimony to which I'm referring is dated
22 February 10, 2006, correct?

23 A Yes.

24 Q And if I asked you the same questions that are
25 asked and answered in your prefiled testimony, would your

1 answers be the same today?

2 A Yes.

3 Q Mr. Gillan, do you have a summary prepared?

4 A Yes.

5 Q Please give it now.

6 A And bearing in mind the admonishment, a short
7 summary.

8 Commission, I'm unique among witnesses here
9 because I'm actually going to recommend to you rates and
10 tell you why.

11 We believe fundamentally that BellSouth's 271
12 obligation is serious, that they struck an arrangement with
13 Congress to agree to make available certain elements of
14 their network wholly aside from the impairment analysis of
15 the FCC, come any decision by the FCC on impairment, and
16 that the FCC has concluded that that obligation includes the
17 obligation to charge the basic just and reasonable standard
18 that historically has been applied.

19 Clay, carry on your conversation later.

20 MR. JONES: Well, I was talking about the board,
21 so it was related.

22 THE WITNESS: Here's the basic methodology we
23 used. This methodology is actually sometimes known as the
24 new services test, which I was glad to hear Dr. Taylor
25 indicate is one of the ways that regulators can establish

1 just and reasonable rates. That methodology is you
2 calculate the direct costs and then you add a reasonable,
3 just and reasonable contribution to common costs and
4 overheads. How I applied this in calculating the rates was
5 in order to make this as simple as possible, we used
6 BellSouth's estimate of their forward looking costs. So
7 that it would eliminate for the Commission any argument
8 about what the inputs should be. In fact, if you listened
9 to Ms. Tipton a few moments ago, she indicated that those
10 filed TELRIC studies fully recovered BellSouth's costs --
11 glad to hear it. I think they over-recover them, but at any
12 rate, we adopted that.

13 It also means that we increased the cost of
14 capital, the profit margin in those rates from what the
15 staff has done to 11.25 percent, which is an increase of
16 about 15 percent. So we're using their costs plus we gave
17 them their profit margin and then for contribution, we
18 increased it above how much they put in their cost study, to
19 eliminate any argument as to whether or not we were being
20 reasonable.

21 We understand that the Commission is taking an
22 important step by setting these rates and we've responded by
23 giving you as generous a proposal to grant BellSouth as is
24 just and reasonable. Higher prices, higher contribution and
25 higher profits in all the 251 network elements.

1 How much higher? There are three categories of
2 elements in this proceeding. These charts show you the
3 comparison to the TELRIC rates adopted by the Commission at
4 the end of the remand proceeding. In addition, I want to
5 make another observation, BellSouth has a very broad
6 obligation to provide loops and transport and switching,
7 which means there's all kinds of different things we could
8 have asked for. We've limited our request back to only
9 those few network elements that are just really absolutely
10 critical to competition at this time. As the chart shows,
11 the proposed rates that we're recommending the Commission
12 set for these 271 network elements are substantially above
13 the 251 rates that the Commission has set for instances
14 where there's findings of impairment. For loops, and the
15 one that really most of the loops fall into are these DS --
16 the first line, DS1 digital loops in Zone 1, it would be 74
17 percent above the TELRIC rate.

18 You might want to just stand here, because these
19 will go quickly.

20 For transport, they range from 18 to 26 percent,
21 slightly lower increase because the Commission made fewer
22 adjustments to BellSouth's proposed rate.

23 And finally, for switching, two changes. One,
24 we're recommending a very simplified rate structure, a
25 simple flat rate per month, per line. This is the rate

1 structure that the FCC has adopted and a number of states
2 have adopted. I have compared our rate, which is \$6.86 per
3 month, to the average rate in Georgia today. It's about a
4 65 percent increase over what the TELRIC rate was. I've
5 compared it to other states and the FCC who have -- when
6 they estimated TELRIC, actually estimated much lower TELRICs
7 than this Commission had, so this rate is very high relative
8 to what people are paying in Georgia today and is extremely
9 high relative to what other agencies have identified as
10 TELRIC, including the FCC. And I even compared it to the
11 just and reasonable rate set by the Tennessee Commission,
12 which also adopted this rate structure, and it would be
13 higher in Georgia than in Tennessee.

14 Now at the end of day, you've got a simple choice
15 here. We have given you proposed rates that take
16 BellSouth's information, BellSouth's proposals. We've made
17 them more generous than BellSouth asked for and our argument
18 is very simple -- the basic just and reasonable rate
19 standard has always maintained some reasonable nexus to
20 cost. BellSouth's response is they should be able to charge
21 what the market can bear. Well, if you allow them to charge
22 what the market "can bear", it makes a mockery of a 271
23 obligation. After all, obligations are usually being
24 required to do something that you wouldn't otherwise like to
25 do.

1 In addition, in the case of switching, there's no
2 market. BellSouth can't find a single other carrier that
3 sells switching on a wholesale basis to other carriers.
4 That's why they're pricing it -- there is no market test to
5 their "market can bear," which is why when you look at the
6 numbers, there's 450,000 fewer competitors getting lines in
7 the BellSouth region today -- or 450,000 lines -- than just
8 six months ago. It's a 30 percent decline.

9 What you have is local competition collapsing at
10 the very same time that BellSouth's long distance market
11 share is approaching north of 60 percent. 271 is becoming
12 meaningless unless you act to set rates.

13 BellSouth's other argument is that they should be
14 able to charge special access rates, which are not
15 negotiated and in fact are established through exactly the
16 process that Dr. Taylor criticized. They're based from
17 historic embedded costs. Our main response to BellSouth's
18 special access argument candle is those services existed
19 when Congress adopted the telecom act. If all Congress
20 wanted to have available were special access services, it
21 would not have written Section 271 into the Act, because
22 they already existed. In fact, it would make BellSouth's
23 Section 271 obligation no different than any other ILEC that
24 doesn't have a 271 obligation at all. Again, it totally
25 vacates it.

1 So at the end of the day, our testimony explains
2 to you the basic just and reasonable standard as it has
3 traditionally been applied. We applied it using BellSouth's
4 cost information, we proposed rates that produce
5 substantially higher prices than what carriers get today and
6 we've explained that there is no market for switching, and
7 special access just isn't good enough.

8 Thank you.

9 MR. MAGNESS: Mr. Gillan is now available for
10 cross examination.

11 CHAIRMAN WISE: Commission.

12 MR. WALSH: Thank you, Mr. Chairman.

13 Good afternoon, Mr. Gillan. My name is Dan Walsh
14 on behalf of Commission staff.

15 THE WITNESS: Good afternoon -- good evening.

16 CROSS EXAMINATION

17 BY MR. WALSH:

18 Q I just wanted to start with a couple of areas of
19 clarification. Could you refer to page 16 of your
20 testimony, please? Beginning on line 4. You say that
21 BellSouth's penetration of the consumer and small business
22 market is approximately 60 percent. And you're discussing
23 the long distance market here, is that correct?

24 A Yes.

25 Q And then are you still discussing long distance

1 market at the bottom of this paragraph where you state that
2 BellSouth's wholesale lines have fallen by more than 400,000
3 in the last six months alone?

4 A No, those have been wholesale lines provided to
5 carriers for local exchange service, principally UNE-P and
6 UNE-L. Which by the way, on that 450,000 number, the
7 previous witness claimed that some of these might have gone
8 to UNE-L by itself. It's useful to note that in the six
9 months when these lines went down -- the lines for switching
10 went down by 450,000 lines in just six months, the total
11 gain in the BellSouth region for loops was 8000 lines. So
12 the idea that somehow all of these lines are going over to
13 some other configuration is just patently false. There's no
14 way 450,000 lines goes down and 8000 lines go up and it's
15 any significant migration from one to the other.

16 Q Thank you. I'd like to now refer you to page 19
17 of your testimony, beginning at line 8. Are you there?

18 A Yes.

19 Q You state that BellSouth has testified that its
20 concerns with the FCC's TELRIC methodology do not apply to
21 switching and transport network elements, is that correct?

22 A Yes.

23 Q And then you quote from the testimony of a Mr.
24 Robert McKnight on behalf of BellSouth in a South Carolina
25 proceeding, correct?

1 A Yes.

2 Q In the testimony excerpt you provided, Mr.
3 McKnight states that the distortions in the TELRIC results
4 are less evidence in switching and transport network
5 elements than in the calculation of unbundled loop elements,
6 correct? I'm looking at the second paragraph.

7 A Yes -- yes.

8 Q Okay. So is it accurate then to state that the
9 witness didn't quite testify that BellSouth's concerns were
10 not applicable to switching and transport, but rather that
11 the concerns were diminished in that context.

12 A I think the words say that, but I think when you
13 read the entire testimony, it's -- it would be wrong to draw
14 that -- that it was only merely diminished. I mean the
15 reality here is that BellSouth has testified that generally
16 they use the digital switching and the fiber optic networks
17 that are assumed by the model, in the forward looking model.

18 When you look at Georgia, for instance, I think you're at
19 100 percent digital switching, so there's not a question as
20 to whether or not the architecture matches up or the types
21 of facilities match up for this state.

22 In addition -- I mean the briefing will be clear
23 on this point. Ms. Tipton just got off the stand saying
24 that the filed TELRIC studies fully recover BellSouth's
25 forward looking costs as they filed them. Now they had

1 disputes about how people adjust them and so to make sure
2 that we weren't complicating this docket with disputes about
3 input assumptions, I used their filed TELRIC studies to
4 produce these rates. So there shouldn't be any remaining
5 question as to whether or not those TELRIC estimates are
6 their actual forward looking costs, because I think that's
7 exactly what Ms. Tipton just testified to.

8 Q You may have answered this question in part with
9 your explanation, but being that we don't have the entire
10 testimony from Mr. McKnight in your testimony, are you aware
11 of the underlying data support that Mr. McKnight relied upon
12 to determine that the TELRIC results for switching and
13 transport network elements are less distorted than loop and
14 transport?

15 A It was along the lines of what I describe, the
16 fact that there was -- you use the actual network topology,
17 you know, you actually look at where BellSouth wire centers
18 are when you model this, you're not trying to guess where
19 they should be, you use where they are. And that means
20 you're locked into where the transport rates actually go
21 between and it means you're locked into how many switches
22 they have.

23 We'll be glad to -- actually, I think the
24 testimony that this is cited from is already in the record
25 of this proceeding from phase one. It was a cross

1 examination exhibit and so it's already in the record in
2 this proceeding.

3 Q Okay, thank you. And I take it that you agree
4 with Mr. McKnight's conclusion on this point?

5 A Yes, and the reality is that TELRIC has been
6 maligned through repetition rather than substance. There
7 are issues about how analog or copper loop costs might get
8 estimated, but for the things we're talking about here,
9 those concerns don't apply and never have. Plus, the whole
10 notion of TELRIC as being too low is -- this is going to
11 sound too much like an economist, but when Dr. Taylor was up
12 here talking about incremental costs, the incremental cost
13 he was referring to is not TELRIC. The incremental cost
14 he's referring to is a much, much, much lower number than
15 TELRIC because TELRIC is not incremental in the way an
16 economist has used the term.

17 So the minute you agree to even compensate
18 BellSouth at "TELRIC", you're actually paying them a rate
19 the is already several multiples of their incremental cost
20 before you even get into the adjustments I made to make it
21 higher than TELRIC.

22 Q I'd like to switch now and ask you a few questions
23 about how you envision the Commission, the Georgia
24 Commission, going forward in this proceeding. If the
25 Commission sets just and reasonable rates in this proceeding

1 and the parties operate under those rates going forward, is
2 it your expectation that at some point, the Commission would
3 revisit those just and reasonable rates and set new just and
4 reasonable rates?

5 A I think it's possible. I think what would need to
6 happen is you set the rates now and you wait to see how the
7 market evolves and you wait to see what other information
8 comes to light. One of the things that didn't come out here
9 was that Dr. Taylor has, over time, explained that TELRIC is
10 too high as a price for BellSouth, so that BellSouth should
11 be able to price its retail services below that level. Now
12 over time if the Commission were to observe situations where
13 BellSouth is going into the retail market and pricing its
14 retail services below the wholesale rates that I'm
15 recommending here, then I think that might be a reason for
16 the Commission to come back and revisit them, perhaps with
17 the idea of looking at bringing them down, since BellSouth,
18 you know, would be engaged in a price squeeze, which would
19 be unreasonable and unlawful.

20 On the other hand, there might be other situations
21 that might cause the Commission to come back and look and
22 have an upward adjustment.

23 I think for right now, today, what this market
24 absolutely needs are these prices rather than basically
25 being subject to what BellSouth believes the market can

1 bear, which is them getting all the customers back. We're
2 running out of time. You know, you can't lose nearly half a
3 million lines every six months before all the competition in
4 the southeast is gone.

5 Q Would there be a time where instead of setting new
6 just and reasonable rates, the Commission would no longer
7 require BellSouth to file just and reasonable rates, under
8 your expectation, and what would trigger that?

9 A I think under the law, the way you'd get to that
10 point is that BellSouth asks for and receives a forbearance
11 from the FCC from the obligations of 271. Now the ILECs
12 have tried to get the FCC to tell them that they're no
13 longer required to comply with 271 and the FCC has granted
14 them some relief for broadband facilities and been very
15 careful to make sure that it did not grant them any of that
16 relief for the elements that we're talking about here,
17 relating to DSL loops and transport. But if you look at the
18 Omaha -- when the FCC granted Qwest forbearance,
19 deregulation for some of its retail services in Omaha, even
20 there, the FCC was clear, they wanted to continue the 271
21 obligations.

22 So at some point, it may be appropriate to relieve
23 BellSouth of the 271 obligations, but the path to that is
24 their requesting a forbearance action by the FCC.

25 Q If the Commission did not set just and reasonable

1 rates, would that be the same -- for the 271 obligations --
2 would that be the same thing as forbearance for BellSouth?

3 A I think as an effective matter, it would be the
4 same as forbearance. Now BellSouth's lawyers will argue
5 that it's not forbearance because it's not legally
6 forbearance, but what's the difference between being told
7 that rules don't apply to you and being told that you can
8 charge whatever you want? You know, in the real world,
9 those might -- you might have used two different words to
10 describe the same outcome. Right? Being told that you're
11 not going to be held to any kind of meaningful standard or
12 being told that the standard is gone has the same practical
13 effect in the real world. And I think that's one of the
14 problems here, BellSouth is trying to get, through a back
15 door of being able to charge whatever they want, something
16 that the FCC never granted them in the front door, which is
17 forbearance from 271 obligations.

18 Q And the process that you're recommending for the
19 Commission to determine just and reasonable rates is laid
20 out on pages 21 and 22 of your testimony, the two step
21 process?

22 A Yes, it is.

23 Q Okay. Your first step involves using the forward
24 looking prices that BellSouth proposed in Docket Number
25 14361-U, the cost docket; is that correct?